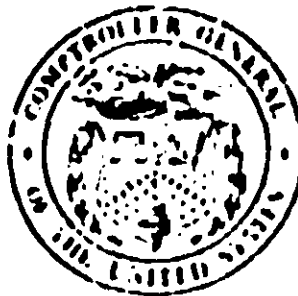


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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*L. Feldman*  
*PLN*

FILE: B-190972

DATE: August 4, 1978

MATTER OF: North American Signal Company--  
Reconsideration

DIGEST:

1. Prior decision sustaining agency's withdrawal of small business set-aside because of price unreasonableness is affirmed. Contracting officer could properly compare price under set-aside with prices submitted by large business on past procurement. Allegation that price submitted by large business on resolicitation is unrealistically low in order to maintain its domination of the market is not for consideration by GAO.
2. Allegation of excessively low bid does not provide a basis upon which award of contract may be challenged.

North American Signal Company (North American), a small business, requests reconsideration of our decision in North American Signal Company, B-190972, May 19, 1978, 78-1 CPD 387 wherein we found no basis to object to the cancellation of a solicitation for an estimated quantity of 1,000 electronic sirens, which was set aside for small business concerns.

The contracting officer determined that all bids received were at unreasonable prices and that the requirement would be resolicited on an unrestricted basis. Our decision concluded that the contracting officer reasonably determined North American's bid price was excessive because of the 16 percent price differential over 1977 prices. We also stated that the contracting officer's decision could be based on the previous price paid by the procuring agency in 1977, even though the procurement was awarded to a large business. Cf. Tufco Industries, Inc., B-189323, July 13, 1977, 77-2 CPD 21; B-164377, July 26, 1968; B-184735, October 4, 1968.

In its request for reconsideration, North American points out that the low bidder on the resolicitation submitted a bid price of \$99.83. North American states that the low bidder is not a manufacturer and assumes that an award will not be made to this bidder because, in its opinion, an electronic siren cannot be produced at this price. North American also states that Federal Signal Corporation, a large business, submitted the second low bid of \$113.49 which is only 59% greater than its 1977 bid. According to the protester, Federal has increased its prices to other customers since September 1977 by approximately 16-1/2 percent. North American argues that Federal has submitted extremely low bid prices which do not reflect its price increases for the purpose of "maintain[ing] their domination of this market." Based on these facts, North American argues that a comparison of a small business bid with such unrealistically low prices "will surely obstruct if not defeat the purpose of the Small Business Act."


Armed Services Procurement Regulation (ASPR) § 1-706.3(a) (1975 ed.) designates the contracting officer as the person to determine the reasonableness of price, and we will not second guess a contracting officer's determination, which depends upon the facts and circumstances of each case. Berlitz School of Languages, B-184296, November 28, 1975, 75-2 CPD 250. Such determination requires the exercise of broad discretion. See Park Manufacturing Company; Century Tool Company, B-185330, B-185331, B-185776, April 16, 1976, 76-1 CPD 260. As we stated in our prior decision, in this case, the only issue for our resolution concerned the reasonableness of the determination that North American's bid price was excessive.

We are not persuaded that the contracting officer acted unreasonably by comparing North American's bid price with a 1977 contract price with a large business concern, after taking account of an inflation factor represented by the wholesale price index. Although the protester believes that the Small Business Act's

purpose is defeated or obstructed when award is made to large business at an unrealistically low price and then is used to establish the reasonableness of subsequent small business bids, we believe established agency procedure for determining bidder responsibility affords small business concerns a reasonable measure of protection. Moreover, any such pricing practice would be of dubious value to such bidder.

The fact that the two lowest bidders on the resolicitation may have submitted extremely low or below-cost bids is not a proper basis upon which to challenge the validity of a contract award under the unrestricted resolicitation. Inter-Con Security Systems, Inc., B-18916, June 15, 1977, 77-1 CPD 434; Consolidated Elevator Company, B-190929, March 3, 1978, 78-1 CPD 166. North American's contention regarding alleged predatory pricing by a large business is for consideration by the appropriate anti-trust enforcement agencies. See 15 U.S.C. § 13(a) (1970) and 15 U.S.C. § 21(a) (1970).

Our decision is affirmed.

  
Deputy Comptroller General  
of the United States